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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)

Implementation of the Local)
Competition Provisions in the)
Telecommunications Act of 1996)

CC Docket No. 96-98

COMMENTS OF NORTHERN TELECOM
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Northern Telecom Inc. ("Nortel") hereby comments on the information disclosure issues raised in the Commission's Notice of Proposed Rulemaking addressing the new obligations imposed on local exchange carriers by the Telecommunications Act of 1996.^{1/} In the Interconnection NPRM, the Commission seeks to develop rules and standards to implement Congress' intent of enhancing local services competition through expanded interconnection and unbundling obligations. Nortel is concerned that any new obligations, including requirements that a local exchange carrier disclose technical changes to its network, not indirectly lead to the public disclosure of its proprietary and confidential information.

SUMMARY

Nortel urges the Commission to use caution in developing information disclosure requirements in connection with

1/ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 96-182, released April 19, 1996 (hereafter cited as "Interconnection NPRM") at ¶'s 189-194.

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the further unbundling of the telecommunications networks so that a manufacturer is not forced to reveal publicly its proprietary or confidential information. Nortel believes that the interests of all of the parties can be accommodated by requiring an incumbent local exchange carrier to disclose only the relevant interfaces or protocols, but not requiring the carrier to disclose additional, detailed information. The Commission must also be sure that any new disclosure obligations do not compromise the carriers' or manufacturers' intellectual property rights.

COMMENTS

Nortel is the leading global supplier, in more than 100 countries, of digital telecommunications systems to businesses, universities, local, state and federal governments, the telecommunications industry, and other institutions. The company employs more than 23,000 people in the United States in manufacturing plants, research and development centers, and in marketing, sales and service offices across the country. Nortel is keenly interested in this proceeding because of its potential impact on the disclosure of information concerning its telecommunications equipment.^{2/}

The Commission historically recognized the validity of manufacturers' concerns regarding disclosure of their proprietary

^{2/} Congress recognized the importance of this issue when it explicitly directed the Commission to consider the need for access to proprietary network elements in determining whether a network element is technically feasible for unbundling. 47 U.S.C. § 251(d) (2) (A).

information.^{3/} The telecommunications equipment market is highly competitive, and a manufacturer would be seriously disadvantaged if its proprietary information was disclosed to its competitors. Moreover, the public interest would be disserved by requiring such disclosure, because a manufacturer would have significantly reduced incentives for developing advances in its products if it was then required to make the related proprietary information available publicly. The Commission therefore should avoid imposing any new disclosure obligations that will have a chilling effect on innovation.^{4/}

Nortel supports the goal in these proceedings of enhancing competition in the telecommunications services marketplace. Nortel also recognizes that some additional disclosure will be necessitated by the expanded interconnection and unbundling obligations that are likely to emerge from this proceeding. Nortel thus has no objection to the imposition of some additional disclosure obligations on the incumbent local exchange carriers, so long as the new disclosure requirements do

3/ E.g., Commission Requirements for Cost Support Material To Be Filed with Open Network Architecture Access Tariffs, DA 91-1309, released October 18, 1991; Commission Requirements for Cost Support Material To Be Filed with Open Network Architecture Access Tariffs, DA 91-1592, released December 23, 1991; Commission Requirements for Cost Support Material To Be Filed with Open Network Architecture Access Tariffs, DA 92-129, released January 31, 1992; Allnet Communications Services, Inc., FOIA Control No. 92-266, FCC 92-356, released August 3, 1992.

4/ Such an impact is also inconsistent with Congress' direction in the Telecommunications Act of 1996 to create incentives for the deployment of new and advanced telecommunications technologies. Section 706 of the Telecommunications Act of 1996. See also, 47 U.S.C. § 157 ("It shall be the policy of the United States to encourage the provision of new technologies and services to the public.").

not result in the public dissemination of Nortel's confidential information (and that such disclosure obligations do not compromise Nortel's intellectual property rights).

Nortel believes that the interests of the incumbent local exchange carriers, the competitive local exchange carriers and the manufacturers can all be accommodated by requiring an incumbent local exchange carrier to disclose only the relevant interfaces or protocols, but not requiring the carrier to disclose additional information.^{5/} Nortel also believes it is important to limit the disclosure only to implemented disclosure or unbundling points, rather than mandating disclosure as soon as a competitive local exchange carrier requests unbundling or interconnection at a particular point. Requiring disclosure prematurely could result in significant, unnecessary burdens, and also presents opportunities for abuse of the disclosure obligations.

Nortel additionally believes that there should be no obligation for a manufacturer to have to reveal the technical characteristics of its products at such a detailed level so as to provide a "blueprint" to allow a competitor or customer to manufacture its own equipment as a result of a carrier's disclosure obligation.^{6/} Rather, the carrier should only need to

^{5/} To the extent that the interfaces or protocols include proprietary information or intellectual property, Nortel suggests that the Commission allow any disclosure by the incumbent local exchange carriers not to be public, but instead to be subject to execution by the recipient of an appropriate licensing agreement with the manufacturer.

^{6/} This suggested level of disclosure is consistent with the Commission's disclosure obligations in the Computer II context.
(continued...)

provide the interface information, and the customer or competitive manufacturer would have to perform its own "reverse engineering" in developing its own products so as to be compatible with that interface.^{7/}

Nortel believes that its proposed refinement of the network disclosure obligations balances the interests of all of the affected parties, and best serves the public interest.

Respectfully Submitted,



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^{6/} (...continued)

See e.g., Computer and Business Equipment Manufacturers Association, FCC 83-182, released May 9, 1983 at ¶ 36.

^{7/} To the extent that a competitive local exchange carrier requires information in addition to the interface or protocol specifications, it could approach the manufacturer directly to obtain that information subject to an appropriate confidentiality agreement and/or a licensing agreement. There may be situations where the desired information may represent intellectual property of the manufacturer (patents, copyrights or trade secrets). Under these circumstances, the manufacturer must be in a position to enforce its intellectual property rights.